

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 1:04CR381
)	
v.	)	Cts. 1-2:18 U.S.C. § 1959(a)(5) and (6)
	)	(Conspiracy to Commit Violent Crime in
ALIRIO REYES,	)	Aid of Racketeering)
a.k.a., "Seco,")	
All Counts	)	Ct. 3: 18 U.S.C. §§ 2 and 1959(a)(1)
	)	(Murder in Aid of Racketeering)
)	
OSMIN HERIBERTO ALFARO-FUENTES	)	Ct. 4: 18 U.S.C. §§ 2 and 1959(a)(3)
a.k.a., "Buso,"	)	(Aggravated Assault in Aid of Racketeering)
Counts 1 - 7)	
	)	Ct. 5: 18 U.S.C. §§ 2 and 1959(a)(5)
Defendants.	)	(Attempted Murder in Aid of Racketeering)
)	
	)	Cts. 6-7: 18 U.S.C. §§ 2 and 924(c)
	)	(Use of a Firearm During and in Relation to
	)	a Crime of Violence)
)	
	)	Ct. 8: 18 U.S.C. § 1073
	)	(Unlawful Flight to Avoid Prosecution)

DECEMBER 2004 TERM - at Alexandria

SECOND SUPERSEDING INDICTMENT

COUNT ONE

(Conspiracy to Commit Murder in Aid of Racketeering)

THE GRAND JURY CHARGES THAT:

The Enterprise

At all times relevant to this Second Superseding Indictment:

1. The defendants, ALIRIO REYES, also known as "Seco," and OSMIN

HERIBERTO ALFARO-FUENTES, also known as "Buso," were members and associates of a

criminal organization, specifically, Mara Salvatrucha, also known as MS-13. MS-13 was a violent gang involved in a variety of criminal activities including auto thefts, threats, witness intimidation, aggravated assault, and murder—all in the Eastern District of Virginia and elsewhere.

2. MS-13 operated in the Eastern District of Virginia since approximately 1993. MS-13 had members and associates spread throughout the United States in, among other places, Virginia, Maryland, Washington, D.C., Texas, and California, as well as in Central America, including El Salvador. MS-13 recruited predominantly from the Hispanic community and typically among juveniles. Recruits were “jumped” into the gang by being physically beaten by members while a member counted to 13. MS-13 gang members typically tattooed their bodies to identify their membership in, and allegiance to, MS-13, although some members deliberately avoided such tattoos in an effort to avoid detection by law enforcement. MS-13 gang tattoos typically included large block “M” and “S” letters, the number “13,” the member’s clique, and the MS-13 hand sign which represented both an inverted “M” and the face of the devil with outstretched fingers representing the devil’s horns. The tattoos were commonly located on members’ shoulders, chest, back and sometimes were placed on their necks, chins, foreheads, and knuckles.

3. New recruits were indoctrinated into MS-13 rules, which were ruthlessly enforced. One prominent rule encouraged MS-13 gang members to confront, fight, and, kill rival gang members, known as “chavalas.” Unreasonable refusal to confront and fight “chavalas” was punishable by beatings, and, potentially, death.

4. Another prominent rule commanded silence about gang activity and forbade

cooperation with law enforcement. The sanction for violating the code of silence was a “green light.” A “green light” was a signal that the gang had approved the killing of someone suspected of cooperating with law enforcement. The killing of those who cooperated with the government and provided information to law enforcement served as a clear warning to others who might consider informing on MS-13.

5. The MS-13 gang was broken into cliques that held regular individual meetings and sent leaders to larger regional, or general, meetings to maintain control and resolve problems within the gang. MS-13 meetings typically occurred within hotel rooms or parks in the Eastern District of Virginia and elsewhere. Attendance was mandatory among the membership of MS-13 and absences were punishable by beatings.

6. MS-13, including its leadership, membership, and associates, constituted an enterprise as defined in Title 18, United States Code, Section 1959(b)(2), that is, a group of individuals associated in fact that engaged in, and the activities of which affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

Objectives of the Enterprise

7. The objectives of MS-13 included the following:
- a. Preserving, expanding, and protecting the power, territory, and prestige of MS-13 through the use of intimidation, violence, and threats of violence.
 - b. Promoting and enhancing MS-13's and its members' and associates' activities.

- c. Keeping victims in fear of MS-13 and in fear of its members and associates through intimidation, violence, and threats of violence.
- d. Confronting and retaliating against rival gangs through the use of intimidation, violence, threats of violence, assaults, and murders.
- e. Financially supporting members of MS-13 who had been deported or imprisoned for gang-related activities.

Means and Methods of the Enterprise

- 8. Among the means and methods by which the defendants and their associates conducted and participated in the conduct of the affairs of MS-13 were the following:
 - a. Members of MS-13 and their associates used intimidation, violence, and threats of violence, including murder and assault, to preserve, expand, and protect the enterprise's territory and activities.
 - b. Members of MS-13 and their associates used intimidation, violence, and threats of violence, including murder and assault, to promote and enhance its prestige, reputation, and position in the community.
 - c. Members of MS-13 and their associates promoted a climate of fear through intimidation, violence, and threats of violence.
 - d. Members of MS-13 and their associates used intimidation, violence, and threats of violence, including murder and assault, against various individuals, including known and suspected members of rival gangs.
 - e. Members of MS-13 used intimidation, violence, and threats of violence, including murder and assault, to discipline enterprise members and associates who had violated

enterprise rules.

f. Members of MS-13 used intimidation, violence, and threats of violence, including murder and assault, to punish enterprise members and associates who had been disloyal.

g. Members of MS-13 stole vehicles and transported them in interstate commerce to attend and promote enterprise activities.

9. MS-13, through its members and associates, engaged in racketeering activity as defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), namely, acts involving murder, in violation of laws of the Commonwealth of Virginia, and acts indictable under Sections 1503 (obstruction of justice), 1512 (witness tampering), 1513 (witness retaliation), and 2312 (interstate transportation of stolen vehicles), of Title 18, United States Code.

10. On or about May 16, 2004, in Fairfax County, Virginia, in the Eastern District of Virginia, and elsewhere, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from MS-13, and for the purpose of gaining entrance to and maintaining and increasing position in MS-13, an enterprise engaged in racketeering activity, ALIRIO REYES, also known as “Seco,” and OSMIN HERIBERTO ALFARO-FUENTES, also known as “Buso,” the defendants, unlawfully and knowingly conspired to murder a juvenile male and a juvenile female in violation of the laws of the Commonwealth of Virginia, specifically, Va. Code Ann. §§ 18.2-22 and 18.2-32. (Title 18, United States Code, Section 1959(a)(5).)

COUNT TWO

(Conspiracy to Commit Aggravated Assault in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 9 of Count One of this Second Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

2. On or about May 16, 2004, in Fairfax County, Virginia, in the Eastern District of Virginia, and elsewhere, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from MS-13, and for the purpose of gaining entrance to and maintaining and increasing position in MS-13, an enterprise engaged in racketeering activity, ALIRIO REYES, also known as “Seco,” and OSMIN HERIBERTO ALFARO-FUENTES, also known as “Buso,” the defendants, unlawfully and knowingly conspired to assault a juvenile female with a dangerous weapon, to wit, a .38-caliber handgun, resulting in serious bodily injury, in violation of the laws of the Commonwealth of Virginia, specifically, Va. Code Ann. §§ 18.2-22 and 18.2-51.

(Title 18, United States Code, Section 1959(a)(6).)

COUNT THREE
(Murder in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 9 of Count One of this Second Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

2. On or about May 16, 2004, in Fairfax County, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from MS-13, and for the purpose of gaining entrance to and maintaining and increasing position in MS-13, an enterprise engaged in racketeering activity, ALIRIO REYES, also known as “Seco,” and OSMIN HERIBERTO ALFARO-FUENTES, also known as “Buso,” the defendants, unlawfully and knowingly murdered a juvenile male in violation of the laws of the Commonwealth of Virginia, specifically, Va. Code Ann. § 18.2-32; and they did aid, abet, and assist each other in the commission of said offense.

(Title 18, United States Code, Sections 2 and 1959(a)(1).)

COUNT FOUR
(Aggravated Assault in Aid of Racketeering)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 9 of Count One of this Second Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

2. On or about May 16, 2004, in Fairfax County, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from MS-13, and for the purpose of gaining entrance to and maintaining and increasing position in MS-13, an enterprise engaged in racketeering activity, ALIRIO REYES, also known as “Seco,” and OSMIN HERIBERTO ALFARO-FUENTES, also known as “Buso,” the defendants, unlawfully and knowingly assaulted a female juvenile with a dangerous weapon, specifically, a .38-caliber handgun, resulting in serious bodily injury, in violation of the laws of the Commonwealth of Virginia, specifically, Va. Code Ann. § 18.2-51; and they did aid, abet, and assist each other in the commission of said offense.

(Title 18, United States Code, Sections 2 and 1959(a)(3).)

COUNT FIVE
(Attempted Murder in Aid of Racketeering)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 9 of Count One of this Second Superseding Indictment are realleged and incorporated by reference as though fully set forth herein.

2. On or about May 16, 2004, in Fairfax County, Virginia, in the Eastern District of Virginia, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, anything of pecuniary value from MS-13, and for the purpose of gaining entrance to and maintaining and increasing position in MS-13, an enterprise engaged in racketeering activity, ALIRIO REYES, also known as “Seco,” and OSMIN HERIBERTO ALFARO-FUENTES, also known as “Buso,” the defendants, unlawfully and knowingly attempted to murder a juvenile female in violation of the laws of the Commonwealth of Virginia, specifically, Va. Code Ann. §§ 18.2-26 and 18.2-32; and they did aid, abet, and assist each other in the commission of said offense.

(Title 18, United States Code, Sections 2 and 1959(a)(5).)

COUNT SIX

(Use of Firearm During and in Relation to Crime of Violence)

THE GRAND JURY FURTHER CHARGES THAT:

On or about May 16, 2004, in Fairfax County, Virginia, within the Eastern District of Virginia and elsewhere, the defendants, ALIRIO REYES, also known as “Seco,” and OSMIN HERIBERTO ALFARO-FUENTES, also known as “Buso,” did unlawfully and knowingly carry, use, brandish, and discharge a firearm, specifically, a .38-caliber handgun, during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, specifically, conspiracy to murder, in violation of Title 18, United States Code, Section 1959(a)(5), as set forth and charged in Count One of this Second Superseding Indictment, and murder, in violation of Title 18, United States Code, Section 1959(a)(1), as set forth and charged in Count Three of this Second Superseding Indictment, which description of these crimes of violence is re-alleged and incorporated by reference herein; and they possessed this firearm in furtherance of such crimes, and caused the death of the juvenile male through the use of the firearm; and they did aid, abet, and assist each other in the commission of said offense.

(In violation of Title 18, United States Code, Sections 2, 924(c)(1)(A), and 924(i).)

COUNT SEVEN

(Use of Firearm During and in Relation to Crime of Violence)

THE GRAND JURY FURTHER CHARGES THAT:

On or about May 16, 2004, in Fairfax County, Virginia, within the Eastern District of Virginia and elsewhere, the defendants, ALIRIO REYES, also known as “Seco,” and OSMIN HERIBERTO ALFARO-FUENTES, also known as “Buso,” did unlawfully and knowingly carry, use, brandish, and discharge a firearm, specifically, a .38-caliber handgun, during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, specifically, conspiracy to assault with a deadly weapon resulting in serious bodily injury, in violation of Title 18, United States Code, Section 1959(a)(6), as set forth and charged in Count Two of this Second Superseding Indictment, and assault with a dangerous weapon resulting in serious bodily injury, in violation of Title 18, United States Code, Section 1959(a)(6), as set forth and charged in Count Four of this Second Superseding Indictment, which description of these crimes of violence is re-alleged and incorporated by reference herein; and they possessed this firearm in furtherance of such crimes; and they did aid, abet, and assist each other in the commission of said offense.

(In violation of Title 18, United States Code, Sections 2 and 924(c)(1)(A).)

COUNT EIGHT
(Unlawful Flight to Avoid Prosecution)

THE GRAND JURY FURTHER CHARGES THAT:

From on or about May 16, 2004, through on or about June 18, 2004, in Fairfax County, Virginia, within the Eastern District of Virginia and elsewhere, the defendant, ALIRIO REYES, also known as “Seco,” with intent to avoid prosecution for murder, Va. Code. Ann. § 18.2-32, and malicious wounding, Va. Code Ann. § 18.2-51, which are felonies under the laws of the Commonwealth of Virginia, did travel in interstate commerce from Virginia to California.
(In violation of Title 18, United States Code, Section 1073.)

NOTICE OF SPECIAL FINDINGS

As to Counts Three and Six, the defendants ALIRIO REYES, also known as “Seco,” and OSMIN HERIBERTO ALFARO-FUENTES, also known as “Buso”:

- a. were 18 years of age or older at the time of the offenses;
- b. intentionally killed a male juvenile (Title 18, United States Code, Section 3591(a)(2)(A));
- c. intentionally inflicted serious bodily injury that resulted in the death of a male juvenile (Title 18, United States Code, Section 3591(a)(2)(B));
- d. intentionally participated in one or more acts, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than a participant in the offense, and a male juvenile died as a direct result of such act or acts (Title 18, United States Code, Section 3591(a)(2)(C));
- e. intentionally and specifically engaged in one or more acts of violence, knowing that the act or acts created a grave risk of death to a person, other than one of the participants in the offense, such that participation in such acts constituted a reckless disregard for human life, and a male juvenile died as a direct result of such act or acts (Title 18, United States Code, Section 3591(a)(2)(D));
- f. in the commission of the offense, or in escaping apprehension for the violation of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense, specifically, a female juvenile (Title 18, United States Code, Section 3592(c)(5));
- g. intentionally killed or attempted to kill more than one person in a single criminal

episode, specifically in that the defendants killed a male juvenile and attempted to kill a female juvenile (Title 18, United States Code, Section 3592(c)(16)).

A TRUE BILL:

Foreperson

Paul J. McNulty
United States Attorney

Robert A. Spencer
Assistant United States Attorney
Chief, Criminal Division

Morris R. Parker, Jr.
Assistant United States Attorney

Patrick F. Stokes
Assistant United States Attorney